

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

JOHN T. NELSON,

Plaintiff,

v.

Case No. 3:11cv00014

ANDREW H. HERRICK AND ALBEMARLE
COUNTY BOARD OF SOCIAL
SERVICES/ALBEMARLE COUNTY
DEPARTMENT OF SOCIAL SERVICES,

Defendant.

MOTION TO DISMISS

NOW COMES the defendant, Andrew H. Herrick, by counsel, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and moves this Court to dismiss the plaintiff's Amended Complaint in its entirety as the Amended Complaint does not state a claim upon which relief can be granted. Plaintiff's Amended Complaint should be dismissed, because Andrew Herrick is entitled to absolute immunity, or in the alternative, qualified immunity from all claims. Moreover, the Amended Complaint is barred by the statute of limitations and does not contain factual allegations that rise to the threshold level necessary to establish a cause of action against Andrew Herrick. Andrew Herrick hereby incorporates his brief in support of the Motion to Dismiss as if fully set forth herein.

WHEREFORE, for the foregoing reasons, defendant Andrew Herrick respectfully requests that this Court grant his Motion to Dismiss and dismiss the Amended Complaint filed against him with prejudice, and that he be awarded his costs and attorney's fees incurred in this matter.

ANDREW H. HERRICK

By Counsel

/s/

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C E R T I F I C A T E

I hereby certify that on the 5th day of July, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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